IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08-08-2007

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MRS. JUSTICE R. BANUMATHI

HABEAS CORPUS PETITION NO.312 OF 2007

Radha
W/o. Ramu .. Petitioner

Vs.

1. The Secretary to Govt.,
   Prohibition and Excise Department,
   Fort St. George, Chennai 9.

2. The Commissioner of Police,
   Greater Chennai, Egmore,
   Chennai 8. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Habeas Corpus to call for the records pertaining to the order of detention No.33 dated 30.1.2007, passed by the second respondent and set aside the same and direct the respondents to produce the detenu Sankar, S/o. Ramar, now confined in Central Prison, Puzhal, Chennai, before this Court and set him at liberty.

For Petitioner : Mr.N. Duraisamy for
Mr.G. Ramakrishnan

For Respondents : Mr.M. Babu Muthu Meeran
Addl. Public Prosecutor

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P.K. MISRA, J

Mother of the detenu has filed this Habeas Corpus Petition challenging the order of detention dated 30.1.2007, which has been passed on the allegation that detenu is a Goonda.

2. Detenu came to the adverse notice of the police in two adverse cases, one is R-10 MGR Nagar Police Station Cr.No.63/2007 registered under Section 392 IPC., and the other is R-7 K.K. Nagar

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Police Station Cr.No.63/2007 registered under Section 397 IPC. Both the cases had occurred on the very same day and, at the time of passing the detention order, were still under investigation. The order of detention has been passed on the basis of the occurrence dated 11.1.2007. It is alleged that offence under Sections 341, 336, 397 and 506(2) IPC have been committed and case has been registered as R-7 K.K. Nagar Police Station Cr.No.68 of 2007.

3. Learned counsel for the petitioner has raised the following contentions :-

(1) In the Tamil order of detention, which is served on the detenu, date "30" has not been indicated at the top right hand side corner of the order and, therefore, it was not possible for the detenu, who knows only Tamil, to find out the actual date of order of detention.

(2) Conclusion of the detaining authority that there was possibility of detenu being released on bail is not based on any material on record and it is the mere *ipse dixit* of the detaining authority and, therefore, the detention order is to be quashed.

(3) There has been unnecessary and unexplained delay in disposal of the representation made on behalf of the detenu.

4. So far as the first contention is concerned, even though in the copies of detention order available in the booklet the date "30" has been indicated in the Tamil version, we found from the original order produced by the counsel for the petitioner that the date "30" is not indicated at the top right hand side corner of the order. However, signature is dated as "30". Similarly, on the left side top corner Number "33" is also found missing. We find that in the English order of detention there is no such defect. According to us, omission to give date "30" at the top of the order as well as "33" on the left hand side has not caused any prejudice to the detenu. Moreover, the number "30", which is written in Arabic in English order of detention, is also usually written in similar fashion while writing in Tamil. It is also to be noticed that in the grounds of detention, at relevant places number "30" has been indicated and similarly it is clearly indicated in para 2 of the grounds of detention that detenu had been detained by virtue of the order dated 30.1.2007. Therefore, the mere inadvertent omission to give the date of order at some of the places in Tamil order of detention cannot be considered as a serious lapse so as to vitiate the order of detention, particularly it can be said that the detenu has not been prejudiced in any manner.

5. Next submission of the petitioner is to the effect that the detaining authority has merely jumped to the conclusion that possibility of the detenu coming out on bail is without any

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cogent material.

6. In paragraph 4 of the grounds of detention, it has been indicated :-

> "4. I am aware that Thiru Shankar is in remand in R-7 K.K. Nagar Police Station Crime No.68/2007 and he has moved bail applications before the Principal Sessions Court, Chennai in Crl.M.P.Nos.854/2007 and 855/2007 in R7 K.K. Nagar Police Station Crime Nos.68/2007 and 63/2007 respectively and both the bail applications are pending. I am also aware that there is very likely of his coming out on bail since in similar cases bails are granted by the Sessions Court or High Court. If he comes out on bail, he will indulge in further activities, which will be prejudicial to the maintenance of pubic order. ..."

7. Law is now well settled that even where the detenu is in custody in connection with some pending case, the order of detention can be passed, provided the detaining authority comes to the conclusion regarding the imminent possibility of the detenu being released on bail. [See A.I.R. 1964 S.C.334 (*Rameshwar Shaw v. District Magistrate, Burdwan)*, (1986)4 S.C.C. 416 (*Binod Singh v. District Magistrate, Dhanabad)*,(2002)7 S.C.C. 129 (*Rajesh Gulati v. Government of NCT of Delhi)* (2006)1 M.L.J.(Crl.) 539 (T.V. SARAVANAN alias S.A.R. PRASANNA VENKATACHARIAR CHATURVEDI v. STATE, THROUGH SECRETARY AND ANOTHER),(2006) 9 SCC 711 (A. SHANTHI (SMT) v. GOVERNMENT OF TAMIL NADU AND OTHERS) and the Full Bench decision in 2005(4) CTC 497 (K. THIRUPATHI v. DISTRICT MAGISTRATE AND DISTRICT COLLECTOR, TIRUCHIRAPALLI DISTRICT AT TIRUCHIRAPALI AND ANOTHER), including the H.C.P.No.1303 of 2006 disposed of on 27.6.2007 and HCP.Nos.46, 52, 74, 79 and 131 of 2007 date 19.6.2007].

8. In the present case, the detaining authority has referred to the fact that bail applications have been filed, which were pending. Then the detaining authority came to the conclusion regarding possibility of coming out on bail "since in similar cases bails are granted by the Sessions Court or High Court". It is worthwhile to notice that the detenu alleged to have committed offence inter alia under Section 397 IPC in respect of two matters wherein bail applications have been filed. Keeping in view the nature of allegations and trend or orders passed by the Courts in such matters, it is difficult to come to any different conclusion. The subjective satisfaction recorded by the detaining authority in the peculiar facts and circumstances of the case cannot be said to be baseless warranting interference by this Court.

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9. Last contention of the counsel for the petitioner, however, appears to be acceptable. The contention is relating to undue delay in disposal of the representation. From the chart produced by the learned Addl. Public Prosecutor, we find that representation received on 28.2.2007 has been rejected on 22.3.2007. No convincing explanation is forthcoming regarding intervening delay. In such view of the matter, we are constrained to quash the order of detention.

10. For the aforesaid reasons, the Habeas Corpus Petition is allowed and the detention order is quashed and the detenu is set at liberty forthwith unless his presence is required in connection with any other case.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

dpk

To

1. The Secretary to Govt.,
   Prohibition and Excise Department,
   Fort St. George, Chennai 9.

2. The Commissioner of Police,
   Greater Chennai, Egmore, Chennai 8.

3.The Superintendent, Central Prison,Chennai.
(In duplicate for Communication to Detenu)

4.The Joint Secretary to Govt.Public (Law & Order)
Fort St. George, Chnenai-9.

5. The Public Prosecutor, High Court, Madras.

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km/17.8.

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